

Secretariat
Payments System Review
The Treasury
Langton Crescent
Parkes ACT 2600



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Via email: PaymentsReview@treasury.gov.au

Dear Mr Farrell

The Australian Payments Network (AusPayNet) welcomes the opportunity to respond to the Treasury consultation, *Review of the Australian Payments System* (the Review). The Review is timely given much of the regulatory framework was developed in the late 1990s and is substantively unchanged, notwithstanding significant developments in products, services and participants in payments.

About AusPayNet

AusPayNet is the industry association and self-regulatory body for the Australian payments industry. In this core role, AusPayNet manages and develops procedures, policies and standards to deliver convenient and secure payments.

We bring together service providers, government, regulators and end-users to improve the Australian payments system. We do this by promoting competition and innovation, delivering efficiency and controlling systemic risk; this creates a shared purpose that engenders confidence in the payments system. AusPayNet's membership is broad and open to all stakeholders who wish to be represented. Our membership, which includes financial institutions, card schemes, retailers, digital banks, fintechs and global technology firms, has grown by 40% since 2014. This is a clear illustration of diversification and the industry's ability to adapt and respond.

Executive Summary

Australia has a world-class payments system, and its regulatory architecture has largely stood the test of time. We are at an inflection point where payments, traditionally the purview of banks, has been transformed by technology, the associated proliferation of data, new participants and business models, and customer expectation to service the digital economy.

Alongside this, a range of industries, not just financial services, are thinking differently about payments, data, and more broadly what constitutes the transfer of value. As the participants, products and services evolve, it is appropriate to consider whether the current regulatory architecture is well suited to the new paradigm, given its dominant focus on financial stability and prudential oversight.

The challenge for regulation is to provide a level playing field in which new business models can flourish, while providing appropriate protection for, and maximising benefits to, customers. The needs of the digital economy will be well serviced by a regulatory architecture that is based on greater clarity, coordination, and self-regulation; this can be achieved by:

- **Creating a clearer legislative framework** by reviewing the *Payment Systems (Regulation) Act 1998* (PSRA) and clarifying respective roles: government sets policy objectives that align with the needs of the digital economy, the payment regulator oversees a principles-based rule set, and industry collaborates on implementation including self-regulatory standards for interoperability, stability and customer protection.
- **Increasing coordination between government, regulators and end-users** via the establishment of an appropriate forum with end-to-end visibility of the policy objectives, strategic agenda, and value chain.
- **Continuing to leverage self-regulation** – which has served Australia well – in ensuring market-driven innovation continues to deliver interoperability, and consistent end-user experiences, benefits and protections.

The Underlying Challenge: Payments are Evolving and the Regulatory Framework Would Benefit from Greater Clarity and Coordination

The PSRA provides the Reserve Bank of Australia (RBA) with powers to designate and create standards for individual payment systems and the Payments System Board (PSB) has responsibility for determining the RBA's payments systems policy.¹ Importantly, there is a presumption in favour of self-regulation: "industry will continue to operate by self-regulation so far as such regulation promotes an efficient, competitive and stable payments system".²

Within this framing, a wide range of participants have jointly evolved world class products and services that leverage multiple payment systems, technology and data to maximise benefit to customers. Given this transition, regulation based on the construct of individual payment systems and narrow definitions of payment system participants may no longer be optimal. Also notable is that the RBA's powers are largely focused on creation and enforcement of "standards" and "access regimes" for designated payment systems.³ The RBA has raised the question of whether its current enforcement powers are effective.⁴

This evolution was effectively described by RBA Governor Phil Lowe in his address to the 2020 AusPayNet summit:⁵

- *...the structure of payment systems is changing. In some cases it is now better to think of a payments ecosystem, rather than a payments system. In this ecosystem, the payment chains can be longer and there are more entities involved and new technologies used.*

The resulting innovation does not always neatly fit into existing regulatory categories. **Appendix 1** outlines the range of regulators involved in payments (in either a direct or ancillary regulatory role) and some of the reviews in progress to address this. The Senate Select Committee on *Financial Technology and Regulatory Technology* (the Committee) surfaced similar commentary from fintechs and new entrants.⁶ Key issues highlighted by submissions to the Committee include regulatory complexity, fragmentation and duplication. This included the number of regulators in the sector, the lack of a single point of contact across regulators, differing mandates, approaches and attitudes.⁷

AusPayNet has previously identified this need for clarity regarding licensing in joint workshops with the fintech community and regulators and recently published a comprehensive guide *Navigating Payments for New*

¹ RBA (Accessed Jan 2021), *Payments System Board* ([link](#))

² *Explanatory Memoranda: Payment Systems (Regulation) Act 1998*, ([link](#)), p12

³ *Payment Systems (Regulation) Act 1998* ([link](#)), s12-18A

⁴ RBA (Nov 2019), *Review of Retail Payments Regulation* ([link](#)), p31-32

⁵ Governor Phil Lowe (Dec 2020), *Speech: Innovation and Regulation in the Australian Payments System* ([link](#))

⁶ Senate Select Committee on Financial Technology and Regulatory Technology (Sept 2020), *Interim Report*, p87-131 ([link](#))

⁷ Senate Select Committee, on Financial Technology and Regulatory Technology (Sept 2020), *Interim Report*, p88-89 ([link](#))

Entrants.⁸ The guide is intended to help new entrants and as such is illustrative of the complexity of the current regulatory landscape.

While the regulatory architecture has performed relatively well to date, the ongoing expansion of the payments ecosystem, increased globalisation, and the growing importance of data suggest that a review of the underlying legislation is needed to ensure that the regulator has appropriately flexible powers. To that end, AusPayNet offers three proposals.

Proposal 1: Create a Clearer Legislative Framework

AusPayNet proposes that Treasury recommends a detailed review of the PSRA with the aim of (a) creating a more clearly defined and flexible set of powers for the payments regulator and (b) enabling policymakers to set the direction and outline expectations of the payments sector in delivering a successful digital economy. Starting points for consideration include:

- Broadening the definition of a payment system,⁹ and considering whether additional tools (beyond setting standards and access regimes for designated systems) are required to give more flexibility or assist regulators to coordinate more effectively.
- Clarifying the roles of various regulators. This could be achieved through a tri-partite division of responsibilities as outlined in Proposal 2 below.
- Principle-based regulation, to ensure regulatory agility. The Swiss FINMA principles may serve as a good starting point.¹⁰ These principles outline that regulation is only used when necessary to meet supervisory goals, that risks of regulation are taken into account, and that regulation is designed to be competition and technology neutral. Importantly, this would help to ensure that, as participation broadens, all participants are regulated in a consistent, activity-based manner (“same risk, same rules”).
- Review of existing responsibilities. For example, whether ASIC remains the optimal home for the ePayments Code given its focus on consumer protection and whether it may be helpful for the payments regulator to have responsibility for accreditation of payment initiators under the Consumer Data Right. Any such adjustments should be completed in the context of a more holistic review.

Proposal 2: Increase Coordination Between Government, Regulators and End-Users

Innovation and the associated gaps in regulatory oversight have challenged the level of coordination between government, regulators and end-users. Given that innovation is likely to continue to outpace regulation, this is likely to be an ongoing challenge, demanding a greater focus on coordination. The legislation could set out clear roles for different bodies:

- **Government:** Set an overall high-level vision and policy expectations for the payments system in consultation with industry.
- **Regulators:** Oversight and implementation of the vision in line with a principle-based rules framework, which regulates “the field of play” rather than “individual players”.
- **Self-regulation:** Create industry standards, ensure interoperability, and deliver against end-user expectations.

⁸ AusPayNet (Dec 2020), *Navigating Payments for New Entrants* ([link](#))

⁹ Section 7 of the PSRA defines a payment system as “a funds transfer system that facilitates the circulation of money, and includes any instruments and procedures that relate to the system.” ([link](#))

¹⁰ FINMA (Accessed Dec 2020), *Principle-based Regulation* ([link](#))

The establishment of a formal “payments forum” would support this approach. Bringing together a range of players (policymakers, regulators, industry and other end-users), it would provide a discussion forum where industry would assist policymakers to understand trends and work together to solve common problems.

Proposal 3: Continue to Leverage Self-Regulation

Self-regulation within payments encompasses a range of activities: infrastructure build, security/standards development, governance frameworks for payment rails, fraud monitoring, and consumer education, among other collaborative projects.¹¹ Given that payments is a network industry, collaboration is required to ensure the security and interoperability of the underlying system. In addition to AusPayNet, a range of bodies (most significantly the payment schemes) undertake functions that could be described as self-regulatory.

AusPayNet supports the continuation of the current approach under the PSRA (noted above), within high-level policy objectives set by government. Given the pace of change in payments, a market-led approach, including self-regulation, offers the greatest degree of flexibility, skin-in-the-game and agility to successfully respond to new challenges and to maximise benefits to ends users.

Next Steps

Given the foundational importance of the payments system to Australia’s economy, it is critical we have the appropriate regulatory settings. As such, AusPayNet reiterates its support for the review and proposes that additional rounds of consultation on potential options and draft recommendations are required, prior to making final recommendations.

AusPayNet welcomes the opportunity to continue working with Treasury on the areas we have covered and on other relevant topics that may arise as the review progresses. If you have any further questions, please contact Pardeep Grewal, Head of Policy (pgrewal@auspaynet.com.au or 0407 616 819).

Yours sincerely



Andy White

CEO, AusPayNet

¹¹ Further insight into the range of activities undertaken with Australia’s self-regulatory framework is provided at **Appendix 2**.

Responses to Specific Questions

- 1) Does the regulatory architecture appropriately facilitate the development of an overall vision, strategy and principles for the Australian payments system?
- 2) How should our regulatory architecture be designed in order to balance the management of risk and efficiency in the payment system with the need for effectiveness for end-users?

AusPayNet’s vision of the direction of travel for Australia’s payments system, and proposals for achieving clarity, coordination, and self-regulation is contained in the **Executive Summary** above.

Our proposals provide scope for Government to “set an overall high-level vision and policy expectations for the payments system in consultation with industry” while also allowing for industry to develop complementary and supplementary plans that execute against these expectations. This would leverage existing capacity in the market, noting that industry has been proactive in developing its own strategic plans, such as:

- the Australian Payments Council’s strategic agenda *Payments in a Global, Digital World*¹²
- AusPayNet’s *Future State of Payments Action Plan*¹³
- Roadmaps, such as the NPP technology roadmap¹⁴
- the commercial strategies of individual firms

- 3) What is the appropriate balance between self-regulation, formal regulation and government policy to ensure the payment system continues to work in the best interests of end-users?

Each of the participants in the regulatory and self-regulatory system has their own function and role. As indicated above, AusPayNet proposes that greater clarity between the roles and responsibilities, as well as improved coordination, would work in favour of end users.

AusPayNet’s view is that the self-regulatory component has been broadly successful in supporting innovation and maximising consumer and business benefits. The success of the current approach in generating innovation and new ways for customers to pay was recognised by the Productivity Commission in its Report, *Competition in the Australian Financial System*:¹⁵

- *Payment systems are undergoing a wave of innovation driven by technology and the growing use of data. Incumbents are investing in innovation and there are growing opportunities for fintechs to provide complementary services to existing payment systems or compete against incumbents in their own right. New ways of authorising payments, such as blockchain, may reduce costs and improve efficiency of payment systems. And new platforms, such as digital wallets, are changing the way people pay and the market dynamics of the retail payments system.*

While market forces are the fundamental driver of innovation and customer outcomes, regulation and self-regulation both have a role to play in mediating outcomes. The Explanatory Memoranda to the PSRA explains that self-regulatory frameworks would be retained where they are working effectively.¹⁶

¹² APC (Jun 2019), *Strategic Agenda: Payments in a Global, Digital World* ([link](#))

¹³ AusPayNet (Aug 2020) *Future State of Payments Action Plan* ([link](#))

¹⁴ NPP Australia (Oct 2020), *New Payments Platform Roadmap* ([link](#))

¹⁵ Productivity Commission (Jun 2019), *Final Report of the Inquiry into Competition in the Australian Financial System*, p467 ([link](#))

¹⁶ *Explanatory Memoranda: Payment Systems (Regulation) Act 1988*, ([link](#)), p12

The role of self-regulation in payments in Australia should be understood broadly. As a network industry, payments requires agreement on non-commercial matters, such as standards that enable interoperability, security, and accessibility, to name a few. To deliver on this, AusPayNet facilitates collaboration between a diverse set of participants, including technology companies as well as regulated payments service providers. We actively encourage membership among all organisations with a significant interest in payments and actively seek consultation with organisations that are not members. Insight into the wide range of activities undertaken within Australia’s self-regulatory framework is provided at **Appendix 2**.

4) Are there gaps (or duplication) in the current architecture that need addressing to ensure the system continues to work in the best interests of end-users?

Gaps:

- **New Payment Products and Services:** Gaps have arisen in the regulatory architecture as new players have created new products and services not anticipated by existing regulations. A recent, high-profile example is the emergence of “Buy-Now Pay-Later” services. The interim report of the Select Committee highlighted some of the challenges with the current system from the perspective of fintechs and new entrants.¹⁷ Key issues highlighted by submissions to the Select Committee included the number of regulators in the sector, the lack of a single point of contact across regulators, differing regulatory mandates and differing attitudes.
- **Additional Benefits Associated with Payments:** Gaps have appeared as a result of the continuing evolution of the payments ecosystem. Value is no longer just the monetary value of the payment itself, but the additional benefits that are associated with a payment, such as data. A current example of this is close contact tracing of COVID-19 utilising POS terminal payments, which was proposed by the *National Contact Tracing Review Report* prepared for Australia’s National Cabinet and on which AusPayNet is co-ordinating industry responses to individual requests by State Health departments.¹⁸

Duplication/Simplification:

- **Industry Reporting:** Australia’s sanctions regime is contained in the *Charter of the United Nations Act 1945* and the *Autonomous Sanctions Act 2011*. These are administered by the Department of Foreign Affairs and Trade (DFAT), which maintains a consolidated list of persons and entities subject to sanctions. Australia’s sanctions laws implement United Nations Security Council and Australian autonomous sanctions regimes and prevent transactions to designated entities.

They differ from anti-money laundering and counter terrorism financing (AML/CTF) laws in that the obligation is to block sanctions-violating transactions, rather than merely report them. They also differ in their position within Government – the lead policy agency for AML/CTF is the Attorney-General’s Department and the lead regulator is AUSTRAC. In line with guidelines issued by the Australian Banking Association (ABA), banks screen payment messages for customer name and other relevant information.

Existing sanction screening rules and practices were not designed for real-time, data rich ISO 20022 payment messages. These messages greatly expand the amount of free text available. AML/CTF reporting requirements are currently governed by AUSTRAC, whilst sanctions screening is governed by DFAT. Consideration should be given to consolidating these arrangements.

¹⁷ Senate Select Committee on Financial Technology and Regulatory Technology (Sept 2020), *Interim Report*, ([link](#)), Chapter 4

¹⁸ Department of Health (Nov 2020), *National Contact Tracing Review, A Report for Australia’s National Cabinet* ([link](#))

- **Combatting Financial Crime:** The Australian financial sector and broader community would benefit from a stronger legal framework that provides greater opportunity for specialised financial crime teams to share information pertaining to financial crime (including suspicions of money laundering offences) with one another through a controlled and agreed framework.

Chapter 6 of the *Australian Privacy Principles* currently provides an exemption where an entity believes that the secondary disclosure is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body. However, section 123 (tipping off) of the *Anti-Money Laundering and Counter-Terrorism Financing Act (2006)* (the AML/CTF Act) prohibits disclosure by the reporting entity where a suspicious matter report (SMR) has been lodged under subsection 41(2). This requirement is designed to ensure the information about an SMR is not disclosed or alerted to the person to whom the report is related.

Generally, this rationale is understood and accepted. However, the practical implications of current legislative mandates result in financial institutions being concerned they are unable to effectively share information, which reduces their ability to disrupt financial crime. It is proposed that a stronger legal framework that provides greater clarity and supports more consistent coordination would improve the ability of financial institutions to take appropriate preventative action.

5) How should the regulatory architecture be designed to best facilitate the coordination of participants and regulators to meet the requirements of end-users?

More gaps will likely emerge as the ecosystem continues to evolve and a sustainable solution must move beyond solving for current gaps. In line with our earlier comments, AusPayNet’s view is that market forces and self-regulation remain the most agile way of dealing with change, while Government and regulators should continue to provide broad policy oversight and act to “course correct” where necessary.

One way that this could be achieved would come from principles-based regulation, supported by further coordination between regulators on emerging issues and more flexible regulatory powers. The regulatory powers of the PSB are based around standards. This was an appropriate design in 1998 but consideration needs to be given as to whether the payments regulator has an appropriate set of tools and powers to respond to present and future developments (which may not be anticipated). Similarly, the RBA highlighted constraints regarding its statutory powers in its most recent *Review of Retail Payments Regulation*.¹⁹ It may be worthwhile to consider these questions as a whole.

AusPayNet supports the recent government announcement in line with the recommendation from the Council of Financial Regulators (CFR) that compliance with the *ePayments Code* should be mandatory for payments product providers.²⁰ This would ensure consistent and uniform protections for customers. Given the highly technical nature of payments and the rapid pace of evolution, one option may be to make this an enforceable industry code of conduct, rather than one managed by ASIC, similar to the *ABA Banking Code of Practice*.

6) What are the required features of a future regulatory architecture to ensure it is well-placed to meet the needs of end-users in relation to emerging innovations in the payments system such as those discussed above? Are changes needed to existing structures, roles and mandates involved in the governance of the system?

¹⁹ RBA (Nov 2019), *Issues Paper: Review of Retail Payments Regulation* ([link](#)), p31-32

²⁰ Minister the Hon. Jane Hume (Nov 2020), *Media Release: Supporting Competition and Innovation in Payment Services*, ([link](#))

Our Executive Summary and Proposals provide our view of the required features of a regulatory architecture that is well-placed to meet the needs of end-users. The following additional features would help give life to this vision:

- **Based on High-Level Principles and Desired Outcomes:** As noted in our answer to Question 3, the regulatory framework should provide clear roles for different participants: Government, regulation, self-regulation and industry participants. This would allow Government and the payments regulator to set high-level principles and desired outcomes, which industry can then work towards.
- **Independent Regulators and Self-Regulation:** Our fundamental view is that independent regulation and self-regulation lead to better alignment of investment with consumer and business (end-user) outcomes. A move away from this model could put long-term investments in enhancement and innovation at risk.
- **Like-for-Like Regulation:** As noted above, AusPayNet’s membership structure is open to all participants, with representation and regulation commensurate with risk profile and customer value proposition (“same risk, same rules”).
- **Expertise:** The end-user value proposition of the payments system is ultimately dependent on the technical capacity of the underlying infrastructure. As such, the payments regulator needs to have expertise across the “end-to-end” payment chain.

7) What regulatory architecture is needed to provide support and clarity for businesses – particularly new entrants – to invest and innovate in our payments system?

AusPayNet agrees that there is potential for simplification of regulation and licensing:

- **Simplification:** An increasing area of focus for AusPayNet is educating new entrants. Following research into market needs and consultation with the fintech community, AusPayNet recently published a comprehensive guide, *Navigating Payments for New Entrants*. The guide is intended to help new entrants and as such is illustrative of the complexity of the current regulatory landscape.
- **Licensing:** AusPayNet notes the impact of specific payment/fintech licenses in other jurisdictions and their role in stimulating innovation. These licenses provide clarity around requirements, consumer protections and access rights. Moreover, they have stimulated growth in intermediary B2B payment service providers, focused on ensuring that businesses get paid.²¹ Innovation in this area could play an important role in supporting the flow of money in Australia’s digital economy. The introduction of an electronic-Money Licence could provide similar benefits in this market and AusPayNet supports the recent CFR announcement on Stored Value Facilities.²² Likewise, APRA’s Restricted ADI (RADI) licensing framework, “intended to support increased competition in the banking sector”, provides a helpful example of the potential benefits of this approach.²³ This was supported by Government as it could “encourage new and innovative providers.”²⁴ It was acknowledged that the granting of a RADI licence represented a tangible milestone that could enable applicants to seek more funding, providing an alternative route in facilitating entry into the banking industry and potentially enhancing competition and outcomes for the public.²⁵

²¹ Two examples are Curve (www.curve.com) and Go Cardless (www.gocardless.com)

²² CFR (Nov 2020), *Regulation of Stored-value Facilities in Australia: Conclusions of a Review by the CFR* ([link](#))

²³ APRA (Apr 2018) *Phased Licensing for Authorised-Deposit Taking Institutions* ([link](#))

²⁴ Prime Minister the Hon. Scott Morrison (Aug 2017), *Media Release: Boosting Competition in Banking* ([link](#))

²⁵ APRA (Apr 2018) *Phased Licensing for Authorised-Deposit Taking Institutions* ([link](#))

8) How can the regulatory architecture enable participants in the payments system to make better use of data to improve cross-border payments and other payments that benefit end-users?

Increasingly, data relating to (or accompanying) payments is becoming as important as the payment itself. The payments system is already making better use of data, as exemplified by:

- The use of ISO 20022 message capabilities by NPP: these capabilities were inherent in the design of NPP and are being developed to enable straight-through-processing of payroll, tax and superannuation payments and of e-invoicing, to benefit end-users, both Australian consumers and businesses.
- The industry project, being led by AusPayNet, to migrate Australia's high value payments to the same ISO 20022 data format. This is an important strategic opportunity to harmonise messaging with the NPP and so enable the potential for end users to determine their payment flow according to their needs rather than for it to be determined by the messaging infrastructure itself.
- At the international level, migrating Australia's high value payments to ISO 20022 also ties in with the Financial Stability Board's Stage 3 roadmap on enhancing cross-border payments. Not only does this enable more efficient, lower-risk payments to and from international counterparties, but it will allow the use of richer, more structured data for improved screening around fraud, scams, KYC, AML and sanctions, and resultant improved end-user outcomes.
- The Consumer Data Right regime, and its proposed future direction, including payment initiation.

In this context, the role for regulatory architecture is to support such initiatives through the appropriate high level policy objectives and strategic agenda, recognising the importance of data in optimising end-user benefits.

9) Given rapid changes to the system, what need is there for education for end-users (including consumers and businesses) about payments and who should provide that education?

This should be addressed on a case-by-case basis. Some programs will be appropriate for banks, others for industry, and others for Government. For example, banks are generally best placed to provide end-user education to their customers on payment security requirements, as they own that direct relationship. Industry can often add value. In the past, AusPayNet has developed education material for new entrants and some for end-users. The "Protect Your PIN" campaign, during the rollout of chip-and-PIN technology, introduced to help combat skimming/counterfeit card fraud, is an example of this. AusPayNet has also published guidance material for new entrants (see answer to **Question 6**).

In other areas such as in protecting Australians from scams and ensuring that they have adequate cyber security on personal devices and protect their personal data, there remains a key role for government regulatory agencies such as the ACCC and the ACSC. These high-level government endorsed messages and education can where necessary be further supported and built on by industry. AusPayNet is coordinating the development of an industry wide strategy to address payment scams strategy that will require coordinated consumer education.

- 10) How does Australia's regulatory architecture compare with that of other jurisdictions, particularly as it relates to the encouragement of innovation and competition?
- 11) Are there are lessons from international experiences that can improve Australia's regulatory architecture to ensure it responds effectively to new developments in the future for the benefit of end-users?

The key lesson from international experience is that there is no clear best practice for payments regulation. Globally, there is a diversity of regulatory architecture. Some markets (such as the United Kingdom and Singapore) have formal licensing of payment systems while others do not. Some markets have centralised regulatory structures (such as Singapore), while others allow a greater role for self-regulation (Australia and New Zealand) or have limited regulatory intervention (the United States).

Nonetheless, there are some key insights that emerge from global practice:

- There is a degree of convergence in terms of specific regulatory tools to encourage competition. Most markets possess (or are in the process of exploring/implementing) some mix of graduated or tiered licensing, fintech sandboxes, open banking, electronic money licences and so on. While Australia possesses a regulatory sandbox for fintechs, there is no end-to-end payments sandbox.
- Policymakers have sought greater regulatory clarity as a key enabler of innovation. This has been achieved by a variety of means: for example, the United Kingdom introduced a payments regulator, fintech sandbox and payments services licence. Singapore operates within a licensing environment in which payment services on both an activity and risk-basis. While Australia has proposed the introduction of a streamlined SVF, this does not go as far as some of the licensing proposals in those countries.

- ENDS -